IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 422 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANTBHAI SHOBHAGCHANDRASHAH

Versus

JAYKUMAR ANNA CHIVATE

Appearance:

1. Criminal Revision Application No. 422 of 2003

MR PF MAKWANA for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

MR IM PANDYA, APP for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 16/03/2004

ORAL JUDGEMENT

1. Mr. PF Makwana, ld. counsel appearing for the

petitioner -original complainant is absent. Respondent no.1 is original accused. Rule issued by this Court is also served to respondent no.1 -original accused. However, he has also opted not to appear in the matter. I have heard ld. APP Mr. I.M.Pandya appearing for respondent no.2 State.

2. The present Revision Application is preferred against the order dated 6.1.2003 passed by ld. JMFC, 2nd Court, Surat below application exh.64 in Criminal Case No.2277/2002 registered on the basis of a private complaint filed by the petitioner. The petitioner -original complainant has filed a complaint for the offence punishable under Sec.138 of The Negotiable Instruments Act (hereinafter referred to as the NI Act), but after deposition of the complainant, an application exh.64 came to be moved by the respondent no.1 accused under Sec.91 of CrPC praying that the complainant may be directed to produce all relevant documents namely endorsement, notes, registers and other details as to payment made to the Manager and Peon etc. by way of commission and also as to administrative expenses incurred with respect to the alleged transaction dated 9.9.1998. Ld. JMFC, 2nd Court, Surat, by the impugned order, allowed the application exh.64 and directed the complainant to produce the documents and details as prayed for in the application exh.64. It seems that ld. Judge has not considered the purpose of enactment of Sec.138, 139 of NI Act and the presumption which can be raised against the accused in a case where cheque is returned. Ld. Magistrate has of course referred Sec.91 of CrPC and has observed that application exh.64 seems to have been filed under Sec.91 of CrPC. I have carefully considered the documents which were produced by the complainant vide list dated 11.1.1999. It is clear that all relevant documents were already produced by the complainant. It is not the case of the accused that the complainant when had stepped into witness-box to face cross-examination, was requested to bring certain documents specifying them so that by showing these documents, complainant can be cross-examined. Accused himself has indirectly accepted his status of a trader. No attempts seems to have been made by the defence side by showing documents from his (accused's) books of accounts so that plea of justification can get some strength. When there is a specific presumption under Sec.139 of the NI Act, the things are left to the option of the complainant as to what evidence would be sufficient to prove that cheque was issued in discharge, in whole or in part of any debt or other liabilities. If the accused intends to bring something contrary, then it

is open for him to bring it so that the presumption can be rebutted. In view of above, finding recorded by the ld. JMFC is erroneous, contrary to law and requires to be quashed and set aside.

3. In the result, this Cri. Rev. Application is allowed. The impugned order dated 6.1.2003 passed by ld. JMFC, 2nd Court, Surat below application exh.64 in Criminal Case No.2277/2002 is hereby quashed and set aside. Rule is made absolute accordingly.

4. Before parting, It is observed that because both the responsible advocates i.e. ld. advocate appearing for the petitioner as well as ld. advocate appearing for respondent no.1 -original accused, are absent, it is not possible for this Court to know whether trial is actually pending or the same has been concluded. No interim stay as to further proceedings of the trial has been granted by this Court even while issuing Rule in the matter. So, if trial is concluded, then present judgment shall have no effect on the same and be treated as an academic finding.

[C.K. BUCH, J]

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